

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10760-RGS

ZONEPERFECT NUTRITION COMPANY

v.

HERSHEY FOODS CORPORATION,  
HERSHEY CHOCOLATE &  
CONFECTIONERY CORPORATION, and  
BARRY D. SEARS

ORDER ON THE HERSHEY DEFENDANTS'  
EMERGENCY MOTION FOR A CONTINUANCE OF TRIAL

August 18, 2004

STEARNS, D.J.

Having promised that if defendant Hershey Foods Corp. (Hershey) asked for a continuance of the trial scheduled for August 23, it would be granted, the court will ALLOW the motion.<sup>1</sup> The expedited trial date was intended to prevent any potential damages in this case from escalating. Given the closeness of the infringement issue, the court assumes that this is a risk that defendant Hershey is willing to endure, it having been clearly explained to counsel that by relegating the case to the ordinary scheduling track it will be at least a year before a trial date is next assigned. In light of the continuance, Hershey's motion to strike

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<sup>1</sup>The court makes no ruling on Hershey's claim that bifurcation is improper in an infringement case other than to express doubt that Hershey reads Gasoline Products correctly as it might apply in the present context.

plaintiff's jury demand [Docket #99] is MOOT. The Sears defendants' Motion for Reconsideration (sealed and undocketed) is similarly MOOT.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE